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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 LYNDA ALDERSON, an individual,

10 Plaintiff,

11 v.

12 JETBLUE AIRWAYS CORPORATION, a
13 Delaware corporation,

14 Defendant.

No.: 2:18-cv-01711-RSM

STIPULATED PROTECTIVE ORDER

15 **1. PURPOSES AND LIMITATIONS**

16 Discovery in this action is likely to involve production of confidential, proprietary, or
17 private information for which special protection may be warranted. Accordingly, the parties
18 hereby stipulate to and petition the court to enter the following Stipulated Protective Order.
19 The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer
20 blanket protection on all disclosures or responses to discovery, the protection it affords from
21 public disclosure and use extends only to the limited information or items that are entitled to
22 confidential treatment under the applicable legal principles, and it does not presumptively
23 entitle parties to file confidential information under seal.

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25 RSM) - 1

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1 **2. “CONFIDENTIAL” MATERIAL**

2 “Confidential” material shall include the following documents and tangible things
3 produced or otherwise exchanged: (1) Plaintiff’s employment, medical, and financial records
4 and (2) Defendant’s proprietary information including contracts, incident reports, manuals, and
5 training materials.

6 **3. SCOPE**

7 The protections conferred by this agreement cover not only confidential material (as
8 defined above), but also (1) any information copied or extracted from confidential material;
9 (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any
10 testimony, conversations, or presentations by parties or their counsel that might reveal
11 confidential material.

12 However, the protections conferred by this agreement do not cover information that is
13 in the public domain or becomes part of the public domain through trial or otherwise.

14 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

15 4.1 Basic Principles. A receiving party may use confidential material that is
16 disclosed or produced by another party or by a non-party in connection with this case only for
17 prosecuting, defending, or attempting to settle this litigation. Confidential material may be
18 disclosed only to the categories of persons and under the conditions described in this
19 agreement. Confidential material must be stored and maintained by a receiving party at a
20 location and in a secure manner that ensures that access is limited to the persons authorized
21 under this agreement.

4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the court or permitted in writing by the designating party, a receiving party may disclose any confidential material only to:

(a) the receiving party's counsel of record in this action, as well as employees of counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) the officers, directors, and employees (including in house counsel) of the receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties agree that a particular document or material produced is for Attorney's Eyes Only and is so designated;

(c) experts and consultants to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the court, court personnel, and court reporters and their staff;

(e) copy or imaging services retained by counsel to assist in the duplication of confidential material, provided that counsel for the party retaining the copy or imaging service instructs the service not to disclose any confidential material to third parties and to immediately return all originals and copies of any confidential material;

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the designating party or ordered by the court.

Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential

1 material must be separately bound by the court reporter and may not be disclosed to anyone
2 except as permitted under this agreement;

3 (g) the author or recipient of a document containing the information or a
4 custodian or other person who otherwise possessed or knew the information.

5 4.3 Filing Confidential Material. Before filing confidential material or discussing
6 or referencing such material in court filings, the filing party shall confer with the designating
7 party in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating
8 party will remove the confidential designation, whether the document can be redacted, or
9 whether a motion to seal or stipulation and proposed order is warranted. During the meet and
10 confer process, the designating party must identify the basis for sealing the specific
11 confidential information at issue, and the filing party shall include this basis in its motion to
12 seal, along with any objection to sealing the information at issue. Local Civil Rule 5(g) sets
13 forth the procedures that must be followed and the standards that will be applied when a party
14 seeks permission from the court to file material under seal. A party who seeks to maintain the
15 confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B),
16 even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result
17 in the motion to seal being denied, in accordance with the strong presumption of public access
18 to the Court's files.

19 **5. DESIGNATING PROTECTED MATERIAL**

20 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
21 party or non-party that designates information or items for protection under this agreement
22 must take care to limit any such designation to specific material that qualifies under the
23 appropriate standards. The designating party must designate for protection only those parts of

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1 material, documents, items, or oral or written communications that qualify, so that other
2 portions of the material, documents, items, or communications for which protection is not
3 warranted are not swept unjustifiably within the ambit of this agreement.

4 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
5 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
6 unnecessarily encumber or delay the case development process or to impose unnecessary
7 expenses and burdens on other parties) expose the designating party to sanctions.

8 If it comes to a designating party's attention that information or items that it designated
9 for protection do not qualify for protection, the designating party must promptly notify all other
10 parties that it is withdrawing the mistaken designation.

11 5.2 Manner and Timing of Designations. Except as otherwise provided in this
12 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or
13 ordered, disclosure or discovery material that qualifies for protection under this agreement
14 must be clearly so designated before or when the material is disclosed or produced.

15 (a) Information in documentary form: (*e.g.*, paper or electronic documents
16 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
17 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that
18 contains confidential material. If only a portion or portions of the material on a page qualifies
19 for protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by
20 making appropriate markings in the margins).

21 (b) Testimony given in deposition or in other pretrial proceedings: the
22 parties and any participating non-parties must identify on the record, during the deposition or
23 other pretrial proceeding, all protected testimony, without prejudice to their right to so

1 designate other testimony after reviewing the transcript. Any party or non-party may, within
2 fifteen days after receiving the transcript of the deposition or other pretrial proceeding,
3 designate portions of the transcript, or exhibits thereto, as confidential. If a party or non-party
4 desires to protect confidential information at trial, the issue should be addressed during the pre-
5 trial conference.

6 (c) Other tangible items: the producing party must affix in a prominent
7 place on the exterior of the container or containers in which the information or item is stored
8 the word "CONFIDENTIAL." If only a portion or portions of the information or item warrant
9 protection, the producing party, to the extent practicable, shall identify the protected portion(s).

10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
11 designate qualified information or items does not, standing alone, waive the designating party's
12 right to secure protection under this agreement for such material. Upon timely correction of a
13 designation, the receiving party must make reasonable efforts to ensure that the material is
14 treated in accordance with the provisions of this agreement.

15 6. **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

16 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
17 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
18 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
19 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
20 challenge a confidentiality designation by electing not to mount a challenge promptly after the
21 original designation is disclosed.

22 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
23 regarding confidential designations without court involvement. Any motion regarding
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1 confidential designations or for a protective order must include a certification, in the motion
2 or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer
3 conference with other affected parties in an effort to resolve the dispute without court action.
4 The certification must list the date, manner, and participants to the conference. A good faith
5 effort to confer requires a face-to-face meeting or a telephone conference.

6 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
7 intervention, the designating party may file and serve a motion to retain confidentiality under
8 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden
9 of persuasion in any such motion shall be on the designating party. Frivolous challenges, and
10 those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and
11 burdens on other parties) may expose the challenging party to sanctions. All parties shall
12 continue to maintain the material in question as confidential until the court rules on the
13 challenge.

14 7. **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
15 **OTHER LITIGATION**

16 If a party is served with a subpoena or a court order issued in other litigation that
17 compels disclosure of any information or items designated in this action as
18 “CONFIDENTIAL,” that party must:

19 (a) promptly notify the designating party in writing and include a copy of
20 the subpoena or court order;

21 (b) promptly notify in writing the party who caused the subpoena or order
22 to issue in the other litigation that some or all of the material covered by the subpoena or order
23 is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement, and (d) request that such person or persons execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a producing party gives notice to receiving parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order or agreement that provides for production without prior privilege review. The parties agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

10. NON TERMINATION AND RETURN OF DOCUMENTS

Within 60 days after the termination of this action, including all appeals, each receiving party must return all confidential material to the producing party, including all copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

1 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
2 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
3 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
4 work product, even if such materials contain confidential material.

5 The confidentiality obligations imposed by this agreement shall remain in effect until
6 a designating party agrees otherwise in writing or a court orders otherwise.

7 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

8 Dated April 24, 2019

9 EMERALD LAW GROUP
10 Attorneys for Plaintiff

MILLS MEYERS SWARTLING P.S.
Attorneys for JetBlue Airways Corporation

11 By: _____
Justin Dale
12 WSBA No. 36061
Michael Gustafson
13 WSBA No. 35666

By: _____
Caryn Geraghty Jorgensen
WSBA No. 27514
John Fetters
WSBA No. 40800
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WSBA No. 54190

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1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of
3 any documents in this proceeding shall not, for the purposes of this proceeding or any other
4 federal or state proceeding, constitute a waiver by the producing party of any privilege
5 applicable to those documents, including the attorney-client privilege, attorney work-product
6 protection, or any other privilege or protection recognized by law.

7 DATED this 25th day of April 2019.

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9 RICARDO S. MARTINEZ
10 CHIEF UNITED STATES DISTRICT JUDGE
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty
of perjury that I have read in its entirety and understand the Stipulated Protective Order that
was issued by the United States District Court for the Western District of Washington on [date]
in the case of Lynda Alderson v. JetBlue Airways Corporation, No.: 2:18-cv-01711-RSM. I
agree to comply with and to be bound by all the terms of this Stipulated Protective Order and
I understand and acknowledge that failure to so comply could expose me to sanctions and
punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner
any information or item that is subject to this Stipulated Protective Order to any person or
entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Western District of Washington for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____